IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1263 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

BALVANT @ BALLO BABUSING KAHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1263 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MS B.R.GAJJAR, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/09/2001

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, petitioner/detenu who has been detained by the Commissioner of Police, Surat City, Surat vide order

dated January 13, 2001 (Annexure-A to the petition) in exercise of the powers conferred under Section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), has assailed the order of detention on various grounds and prayed to issue writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and further prayed to set him at liberty forthwith.

2. The grounds of detention order dated January 13, 2001, manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and three cases under Prohibition Act are registered against him which are still pending at investigation stage . Therefore, according to the detaining authority his activities are prejudicial to the maintenance of the public order and therefore powers under Section 9(2) of the Act were exercised by the detaining authority.

3. The petitioner has challenged the detention order on various grounds. However, Mr. H.R.Prajapati, learned Advocate for the petitioner has restricted his arguments to the point that the detaining authority has wrongly considered the aspect of taking step under Section 57(c) of the Bombay Police Act which shows total non-application of mind on the part of the detaining authority. Under Section 57(c) of the Bombay Police Act for taking action against a person minimum 3 conviction of a person is required whereas in the present case all the three cases registered under the Prohibition Act are shown pending investigation and in none of the cases petitioner is convicted. Therefore, according to the learned advocate it reflect total non-application of mind on the part of the detaining authority and therefore, the order of detention is bad in the eyes of law. He, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

4. Ms. B.R.Gajjar, learned AGP has opposed this petition. She, however, does not dispute the factual aspect of the matter that in none of the cases the petitioner has been convicted so far. She, therefore, urged that in the light of settled principles enunciated by this Court, appropriate orders may be passed.

5. I have considered the submissions advanced by the learned Advocates appearing for the parties. I have also perused the averments made in the petition as well as the impugned order of detention and the documents annexed therewith.

6. On having perusal of the record of the case and the original file, there is no manner of doubt that the detaining authority has taken into consideration in the impugned order about taking step under Section 57(c) of the Bombay Police Act. In view of Section 57 of the Bombay Police Act, for taking action against person, minimum three convictions are required. Therefore, order of detention reflects that the detaining authority has wrongly considered the aspect of taking step under Section 57(c) of the Bombay Police Act. It shows total non-application of mind on the part of the detaining authority. Therefore, on this sole count, the order of detention stands vitiated and the petition deserves to be allowed.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 13, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*